

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

FILED
CLERK OF COURT
2005 JAN 21 A 11:46

ROBERT J. KILLION, JR.,

Plaintiff

v.

COMMONWEALTH YACHTS, INC. and
MAINSHIP CORPORATION,

Defendants

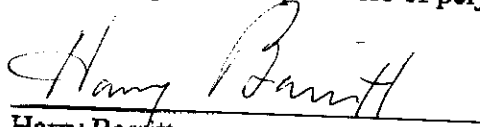
AFFIDAVIT OF HARRY BARRITT IN SUPPORT
OF DEFENDANT COMMONWEALTH YACHTS, INC.'S
MOTION TO DISMISS

Now comes Harry Barritt and, on oath, deposes and says as follows:

1. I am the President of Commonwealth Yachts, Inc., a Virginia corporation with its place of business in Gloucester Point, Virginia. Commonwealth Yachts has been in the business of selling new and used boats in the greater Williamsburg and Jamestown Virginia areas for approximately twenty years.
2. During the time I have done business, I have not marketed or sold any boat or other product in the Commonwealth of Massachusetts.
3. I personally have not been to Massachusetts for approximately 15 years. I do not recall an employee of Commonwealth Yachts ever traveling to Massachusetts to conduct business for the company.
4. In approximately October of 2001, I understand that Robert J. Killion, Jr., the Plaintiff, traveled to Annapolis, Maryland to attend the Annapolis Boat Show. Commonwealth Yachts was an exhibitor at the boat show and is a dealer of Mainship Trawlers.

5. At the boat show, Mr. Killion had conversations with Commonwealth Yacht employees about the Mainship Trawler and appeared to be interested in purchasing one.
6. Discussions and most of the negotiations with Mr. Killion occurred at the boat show.
7. Mr. Killion asked whether he could take delivery of the boat in Massachusetts. Commonwealth Yachts was not willing to do that so Mr. Killion agreed to take delivery in Virginia.
8. Mr. Killion next had an unusual request that Commonwealth Yachts set up a place of business in Massachusetts, indicating that he could somehow save money. Again, Commonwealth Yachts did not agree with this idea as we had no intention of doing business in Massachusetts.
9. Between the boat show and delivery there were perhaps two telephone calls between Mr. Killion and Commonwealth Yachts. I am not certain who initiated them.
10. I believe that the sales agreement was sent to Mr. Killion by fax for his signature. He signed the document and either faxed it back to us. A true and accurate copy of that agreement is attached at Exhibit A, hereto.
11. Since the sale occurred in Virginia, Mr. Killion paid Virginia sales tax on the boat.
12. I understand that Mr. Killion has contacted the manufacturer, Mainship, directly. I further understand that Mainship has performed and continues to be willing to perform warranty services to satisfy Mr. Killion.

Signed this 18th day of January, 2005, under the pains and penalties of perjury.


Harry Barritt
Commonwealth Yachts, Inc.

EXHIBIT

A

W-RED OCT 10, 01
FAXE (6)**Commonwealth Yachts, Inc.**8109 Yacht Haven Road-P. O. Box 1070-Gloucester Point, VA 23062
Phone (804)642-2150-Fax (804)642-9838**PURCHASE AGREEMENT**

Buyer's Name(s)	Robert J. Killian	Res. Ph No.	978-464-5508
Buyer's Address	61 Redemption Rock Trail North	Bus. Ph No.	508-835-6225
City	Princeton	State	MA Zip 1541 Fax No 508-825-6228

I hereby agree to purchase from Commonwealth Yachts, Inc. under the terms and conditions herein, the following Mainship 390 Trawler.

Mainship 390 Trawler Price List

<input type="checkbox"/> Single Yanmar 170 / 170 hp *bow thruster included	\$ 197,600.00
<input checked="" type="checkbox"/> Single Yanmar 370 / 370 hp *bow thruster included	\$ 211,120.00
<input type="checkbox"/> Single 3126 Caterpillar / 360hp *bow thruster included	\$ 207,920.00
<input type="checkbox"/> Single Cummins 330 / 330hp *bow thruster included	\$ 211,120.00
<input type="checkbox"/> Twin Yanmars 230 / 230 hp	\$ 231,320.00

Hull Identification No. TBD Engine Serial Number TBD**Factory Options**

<input checked="" type="checkbox"/> Air Conditioning w/ Reverse Cycle Heat	9,327.00
<input checked="" type="checkbox"/> Bimini	2,060.00
<input checked="" type="checkbox"/> Bottom Paint	1,727.00
<input checked="" type="checkbox"/> Bow Thruster	STANDARD
<input type="checkbox"/> Bow Thruster (for twin engine setup)	10,127.00
<input checked="" type="checkbox"/> Cable TV/Telephone Hookup	STANDARD
<input type="checkbox"/> Central Vacuum Cleaner	660.00
<input checked="" type="checkbox"/> Color Change Blue	393.00
<input type="checkbox"/> Colored Hull (2)	7,460.00
<input checked="" type="checkbox"/> Convertible Sofa	660.00
<input checked="" type="checkbox"/> Dripless shaft logs	1,393.00
<input type="checkbox"/> Electronics Pkg "A" (Raytheon 210 VHF Radio w/Antenna, Tridata VX (speed, depth and temp.)	2,335.00
<input type="checkbox"/> Electronics Pkg "B" ("A" plus RL 70RC Radar/Raychart Display, Raystar 112 LP OPS Sensor)	8,400.00
<input type="checkbox"/> Electronics Pkg "C" (Pkg B plus 4 kw Radar & 24" Radar Dome with 15 meter Cable cable & ST6000 Autopilot)	15,476.00
<input checked="" type="checkbox"/> Enclosure (4-sided)	3,460.00
<input type="checkbox"/> Engine Synchronizer - Glendinning	3,327.00
<input checked="" type="checkbox"/> Feature Stripe Color Change - Blue/Gold	527.00
<input checked="" type="checkbox"/> Folding Mast	393.00
<input checked="" type="checkbox"/> Freight	2,950.00
<input type="checkbox"/> Fresh Water Washdown	260.00
<input checked="" type="checkbox"/> Full Commissioning	4,460.00
<input checked="" type="checkbox"/> Generator 8.0 Kohler Diesel	14,393.00
<input type="checkbox"/> Ice Maker	1,593.00
<input checked="" type="checkbox"/> Internal Sea Strainers	927.00
<input type="checkbox"/> Lower Helm Seat	1,593.00
<input checked="" type="checkbox"/> Microwave	STANDARD
<input type="checkbox"/> Multi Disk CD Player	727.00
<input checked="" type="checkbox"/> Oil Exchange System	1,260.00
<input checked="" type="checkbox"/> Raw Water Washdown	660.00
<input type="checkbox"/> Stereo on Flybridge	660.00
<input type="checkbox"/> Stove - Three Burner Propane & Oven	1,727.00
<input checked="" type="checkbox"/> Stove - Three Burner Electric & Oven	STANDARD
<input checked="" type="checkbox"/> Swim Platform	STANDARD
<input checked="" type="checkbox"/> Teak and Holly Salon Floor	3,593.00
<input type="checkbox"/> Tank Steps	1,060.00
<input type="checkbox"/> Vac-U-Flush Head System	1,860.00
<input checked="" type="checkbox"/> Water Tank Monitor	393.00
<input checked="" type="checkbox"/> Windlass	2,927.00

Dealer Options

Factory Installed Extended Hardtop Grabrails	\$527.00	Purchase Price	263,150.00
Delete coffee maker + add cabinet		Less: Discounts	(38,250.00)
		Subtotal	224,900.00
		Less: Trade	N/A
		Subtotal	224,900.00
Trade-In Description		2% Sales Tax	2,000.00
Trade-In Yr, Make, Mdl:		Subtotal	226,900.00
Hull Identification:		Less: Deposit 10%	(22,490.00)
Engine Serial No.		Balance Due	204,410.00

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